IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1822 of 2002

Union of India, through DRM
Mumbai Division .. Petitioner

versus

Divisional Secretary, P.R.K.P. .. Respondent

...

Mr.Suresh Kumar for the petitioner.

None for the respondent.

CORAM : D.G. KARNIK,J.

DATED : 6th June 2005.

P.C.:

1. Heard the learned counsel for the petitioner. None present for the respondent.

2. This Writ Petition is directed against the judgement and order dated 29th February 2000 passed by the Learned Presiding Officer of the Central Government Industrial Tribunal No.11 (for short 'the Tribunal') allowing the reference filed by the

respondent and ordering reinstatement of the respondent as a workman with continuity of service and the direction to pay full back wages.

3. Rule was issued only with respect to the back wages and the order relating to the reinstatement of the respondent has become final.

4. The respondent who was engaged as a casual labourer by the petitioner on 24th July 1981, continuously worked upto 20th February 1985 when his services were terminated. The respondent moved the Central Government to make a reference challenging his order of termination. By an order dated 28th/30th October 1991, the Central Government made a reference under section 10 of the Industrial Disputes Act 1947. The reference was allowed and the respondent was reinstated. Thereafter on a petition filed in this Court, the matter was remanded back to the Industrial Tribunal. By the impugned order dated 29th February 2000, the order of reinstatement with back wages was passed again.

5. Learned counsel for the petitioner submits that the Tribunal erred in passing the order granting

full back wages to the respondent. According to the learned counsel, the Tribunal did not appreciate that though the respondent's services were terminated in the year 1985, he approached the Central Government for the first time in the year 1991 for making of a reference and as the respondent was guilty of delay and latches, he ought not to have been awarded back wages. He further submits that the respondent had not adduced any evidence that during the period between 1985 till his reinstatement till the year 1997, he was not gainfully employed anywhere else. The respondent was an ordinary unskilled casual workman and he must be working elsewhere to earn his livelihood. Therefore, the Tribunal ought not to have awarded full back wages to him. The petitioner relies upon two decisions of the Supreme Court - i)Gurmail Singh Vs. Principal, Government College of Education & ors. reported in (2000) 9 SCC 496 and ii) Chief Conservator of Forests and Anr. Vs. Rahmat Ullah reported in (2003) 10 SCC 92.

6. In Gurmail Singh Vs. Principal, Govt. College of Education & Ors. (Supra), the Supreme Court held that since there was a delay on the part of the employee in making of a reference, he was not

entitled to back wages during the period between the termination of his services and the date on which the reference was made. The wages till the date of the reinstatement ware allowed only to the extent of 50%.

7. In Chief Conservator Forests Vs. Rahmat Ullah (Supra), the Supreme Court held that respondent was an ordinary workman and considering the long period during which he was out of service, he must have been working elsewhere to earn his livelihood. As there was no material produced by the workman to show that he was not gainfully employed, back wages were again restricted to the extent of 50% of the total wages.

8. In the present case, it may be noted that though the services of the respondent were terminated in February 1985, he moved the Government for making of a reference after six years in the year 1991. In paragraph no.3(s) of the petitioner, petitioner has averred that the respondent approached the Labour Commissioner after six years of termination of service. This statement is not controverted by the respondent by filing any affidavit in reply. Also looking into the fact that the reference was made by the Government in October 1991, it can be said that

the respondent would have approached the Government sometime in the year 1991. Therefore, the respondent would not be entitled to the back wages earlier than the date on which he approached the Government for reference. Though the exact date on which the respondent approached the Labour Commissioner is not on record, it would be somewhere in the year 1991 and I assume it to be around April 1991.

9. Taking into consideration the law laid down by the Supreme Court in the aforesaid two decisions and also taking into consideration the fact that the respondent was an ordinary, unskilled workman and must have worked somewhere to earn his livelihood and also taking into consideration the fact that he has not produced any material on record that he was not gainfully employed elsewhere, it would be appropriate to restrict the back wages from April 1991 till 5th September 1997 at 50%.

10. For these reasons, the direction in the impugned judgement to pay the full back wages is modified and the petitioner is directed to pay to the respondent 50% of the back wages from 1st April 1991 till 5th September 1997.

11. Rule is made absolute to the aforesaid extent.

D.G. KARNIK, J